

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA	:	
	:	CRIMINAL ACTION
v.	:	
	:	NO. 1:12-CR-205-ODE-ECS
WOODROW RUDOLPH DIXON, JR.,	:	
KIRK FLOYD, and	:	
CORNELIUS BERNARD WILSON	:	

GOVERNMENT'S PRE-HEARING RESPONSE TO DEFENDANTS'
MOTIONS TO SUPPRESS EVIDENCE AND STATEMENTS

Comes now the United States of America, by Sally Quillian Yates, United States Attorney, and Angela M. Garland, Assistant United States Attorney for the Northern District of Georgia, and files this GOVERNMENT'S PRE-HEARING RESPONSE TO DEFENDANTS' MOTIONS TO SUPPRESS EVIDENCE AND STATEMENTS as follows:

(1)

In the spirit of judicial economy, the government files this pre-hearing response to the defendants' motions to suppress evidence and statements. This response sets for the issues, legal and factual, of the evidentiary hearing set for September 12, 2012.

(2)

Defendants Dixon, Floyd and Wilson each filed separate motions to suppress evidence seized from mobile telephone. (Docs. 87; 79; and 88, respectively). Each of the defendants individually assert a challenge as to the search of mobile telephones seized from their

respective person. (Id.). It is the government's position that each defendant must establish standing as to the specific phone that each defendant seeks to suppress. (The government may be in a position to stipulate to standing, and currently is attempting to communicate with defense counsel to resolve the standing issue.) Assuming standing is established, none of the defendants have challenged the seizure of the phones. Each of the defendants simply challenge the search of the contents of their respective phone(s) while conceding the lawfulness of the seizure of the phones incident to their individual arrests. (Id.). The lawfulness of the search of the phones themselves is a legal issue that does not require evidence beyond any standing issue. In other words, the defendants' motions concede that: the defendants were lawfully arrested; the defendants were lawfully searched incident to arrest; the mobile phones were lawfully seized from each of the defendants; and the mobile phones were searched without a warrant during the booking process. Thus, the only issue that any of the defendants raise is whether the contents of the cellular phones could be searched without a search warrant. Thus, the government respectfully requests that this Court set a briefing schedule regarding the singular narrow legal issue raised.

(3)

Defendants Dixon and Floyd filed motions to suppress their statements. (Docs. 57 and 79, respectively). These defendants

only raise issues regarding the voluntariness of their waivers of *Miranda*. Once again, the defendants' motions concede the lawfulness of their individual arrests, and do not raise any Fourth Amendment issues with respect to their statements. (Id.). As such, the government anticipates presenting evidence at the evidentiary hearing sufficient to the narrow Fifth Amendment issues raised individually as to each of the two defendants.

WHEREFORE, the Government respectfully requests this Honorable Court to set a briefing schedule for the motion to suppress the search of mobile phones and to limit the scope of the evidence as described above for the evidentiary hearing currently scheduled for September 12, 2012.

Respectfully submitted,

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UNITED STATES ATTORNEY

/s/Angela M. Garland
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CERTIFICATE OF SERVICE

This is to certify that I have this day served upon the person listed below a copy of the foregoing document by depositing in the United States mail a copy of same in an envelope bearing sufficient postage for delivery:

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This 10th day of September, 2012.

/s/Angela M. Garland
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